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C O N F I D E N T I A L SECTION 01 OF 02 TOKYO 001421

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SUBJECT: INVESTMENT EXPERTS REPORT: GOOD BUT COULD HAVE BEEN BETTER

Classified By: Ambassador J. Thomas Schieffer. Reason 1.4 (d)

11. (C) Summary: An American executive who served as a member of the Cabinet Office Investment Experts Panel privately labeled its recently issued report "very cautious." He noted there needed to be more of a push by senior GOJ policy makers if the report is to have the positive, pro-reform effect it might. Such a push is unlikely in the current political climate, he concluded. Nevertheless, the report puts investment issues on the Cabinet's agenda for the first time in two years and does contain a number of points U.S. business and the USG have been advocating. End Summary.

12. (C) The May 19 report of the Cabinet Office Investment Experts Panel had some good points, but could have been better, according to American Chamber of Commerce (ACCJ) President Allan Smith, who served on the Panel. Smith and others pushed hard to include specific recommendations on independent corporate directors, liberalization of cross-border merger rules, and Company Law amendments to allow new forms of cross-border mergers and acquisitions (M&A) -- ones common elsewhere in advanced industrialized economies -- in the text. Their efforts failed in the face of Japanese business' continued fear of triggering a flood of "hostile" takeovers, Smith reported. Despite efforts by reformers on the Panel, the group could only agree on general language identifying "a concrete need" for more "methodologies" for M&A in Japan, and failed to identify concrete steps the GOJ should take. In Smith's view, the recommendations are not sufficient to trigger a significant number of new M&A deals.

13. (C) Nevertheless, Smith welcomed the report's language on the importance of foreign direct investment (FDI) to the Japanese economy. Likewise, he considered the recommendations to "drastically reform" Japan's "no-action

letter" system -- something the USG has long urged in the Regulatory Reform Initiative -- and to lower the corporate tax rate "very helpful." Smith hoped recognition of the importance of no-action letters would trickle down to working levels in GOJ regulatory agencies where, he noted, there is continued resistance to issuing such letters. Smith also commended the Panel's call for sector-specific market opening strategies, beginning with health services, and for reform to the regulatory approval process for medical devices. He suggested the USG, if commenting to Japanese officials on the report, commend the Panel's support for inward FDI but refrain from applauding the M&A recommendations.

¶4. (SBU) Separately, the expert panel's chairman, Professor Haruo Shimada of Chiba College of Commerce, briefed the Council on Economic and Fiscal Policy (CEFP) May 20 on his panel's report. Talking to the press after that meeting, Minister for Economic and Fiscal Policy Hiroko Ota told reporters Prime Minister Fukuda strongly supported the group's recommendations and had instructed the Cabinet Office to use them to update the GOJ's investment promotion strategy. The Prime Minister also asked relevant ministries to "seriously consider" the recommendations and develop ways to implement them, and told CEFP members he wanted to evaluate these efforts at future Council meetings, according to Ota.

¶5. (C) Comment: Despite Smith's rather pessimistic assessment, we believe the panel report is significant for putting FDI back on the Prime Ministerial agenda for the first time in almost two years. The next step is for the CEFP to incorporate the recommendations into its annual Basic Economic and Fiscal Policy Report expected in late June. If the Prime Minister names a strong, senior-level official to take charge of implementing the recommendations -- as former Prime Minister Koizumi did with similar proposals from the Japan Investment Council in 2003 and 2006 -- it could breathe new life into the GOJ's FDI promotion program. If on the other hand, the Cabinet is distracted by other issues, as seems likely in the current political climate, we will probably hear expressions of support for the new policy, but little effective follow through.

SCHIEFFER